

EXHIBIT 1

FILED
CIVIL BUSINESS OFFICE 6
CENTRAL DIVISION

04 JAN -6 PM 3:57

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 MAURA LARKINS
2 1935 Autocross Court
3 El Cajon, CA 92019
4 619 444 0065

5 Plaintiff in pro per

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN DIEGO

9 MAURA LARKINS,
10 Plaintiff,

11 vs.

12 ELIZABETH SCHULMAN,
13 and DOES 1 through 10, inclusive,
14 Defendants.

) Case No. **GIC 823858**

) Judge:

) Department:

)

) COMPLAINT FOR DAMAGES:

) NEGLIGENCE

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18 Plaintiff alleges:

19
20 GENERAL ALLEGATIONS

21 1. Plaintiff MAURA LARKINS is an individual and is now, and at all times
22 mentioned in this complaint was, a resident of San Diego County, California.

23 2. Defendant ELIZABETH SCHULMAN, hereinafter referred to as
24 SCHULMAN, is an individual and is now, and at all times mentioned in this
25 complaint was, a resident of San Diego County, California.
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3. Defendant, SCHULMAN, at all times mentioned in this complaint was licensed to practice law and practiced law in San Diego County, California.

4. The true names of defendants DOES 1 through 10, inclusive, are unknown to plaintiff at this time. Plaintiff sues those defendants by such fictitious names pursuant to section 474 of the Code of Civil Procedure. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designates as a DOE is legally responsible for the events and happenings referred to in this complaint, and unlawfully caused the injuries and damages to plaintiff alleged in this complaint.

5. On or about June 11, 2002, Plaintiff retained and employed SCHULMAN to represent Plaintiff in an administrative hearing regarding Plaintiff's dismissal from employment with Chula Vista Elementary School District. SCHULMAN accepted such employment and agreed to represent Plaintiff.

6. The administrative hearing regarding Plaintiff's dismissal from employment took place on January 6, 2003 through January 10, 2003.

7. An attorney is expected to possess a knowledge of those plain and elementary principles of law that are commonly known by well-informed attorneys, and to discover those additional rules of law which, although not commonly known, may be readily found by standard research techniques [Smith v. Lewis (1975) 13 Cal. 3d 349, 358.

8. When an attorney accepts employment to give legal advice or to render other legal services, the attorney impliedly agrees to use such skill, prudence, and diligence as attorneys of ordinary skill and capacity commonly possess and exercise in

1 the performance of the tasks they undertake [Kirsch v. Duryea (1978) 21 Cal. #d 303,
2 308.

3 9. The standard (of care for attorneys) is that of members of the legal
4 profession in the same or similar locality under similar circumstances [Wright v.
5 Williams (1975) 47 Cal. App. 3d 802, 809.

6
7 10. On or about February 11, 2002, the Commission on Professional
8 Competence mailed a decision to dismiss Plaintiff.

9 11. In rendering legal services to Plaintiff pursuant to such representation,
10 SCHULMAN failed to exercise reasonable care and skill as specified in the following
11 causes of action.

12
13 **FIRST CAUSE OF ACTION**

14 **NEGLIGENT ADVICE TO A CLIENT**

15 12. Plaintiff realleges and incorporates as though fully stated herein,
16 paragraphs 1 through 11 inclusive of the General Allegations.

17 13. On or about March 27, 2003, SCHULMAN negligently advised Plaintiff
18 that Plaintiff had 90 days to file a Petition for Judicial Review of the decision of the
19 Commission on Professional Competence (**Exhibit 1**).

20
21 14. Plaintiff relied on such advice and in consequence thereof Plaintiff filed
22 her Petition for Writ of Mandate ninety days after the decision was mailed, instead of
23 the required 60 days, and that Petition was dismissed on the basis of being late filed.
24 Plaintiff so acted only on the advice of Defendant SCHULMAN and would not have
25 so acted without such advice.
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1 15. As a direct and proximate result of the above-described negligence and
2 carelessness of Defendant, Plaintiff was damaged in that Plaintiff's Petition for Writ
3 of Mandate (**Exhibit 2**), which would have been given precedence in Superior Court
4 over other cases, and regarding which the Superior Court would have made an
5 independent judgment on the evidence, was summarily dismissed, and Plaintiff's
6 dismissal from employment became final and Plaintiff suffered loss of her career and
7 livelihood, including salary and future benefits, and severe emotional distress in an
8 amount according to proof at trial.

9
10 16. Plaintiff is informed and believes, and on the basis of that information and
11 belief alleges, that had SCHULMAN used proper skill and care in her representation
12 of Plaintiff, Plaintiff would have prevailed in her Petition for Writ of Mandate since
13 she was entitled to Judicial Review and the independent judgment of the Superior
14 Court.

15
16 **SECOND CAUSE OF ACTION**

17 **LACK OF DILIGENCE IN COMMUNICATION WITH CLIENT AND**
18 **REPRESENTATION OF CLIENT RESULTING IN BREACH OF**
19 **DEFENDANT'S GOOD FAITH AND FIDUCIARY DUTY**

20
21 17. Plaintiff realleges and incorporates as though fully stated herein,
22 paragraphs 1 through 11 inclusive of the General Allegations.

23 18. SCHULMAN was negligent in her representation of Plaintiff on January 6,
24 2003, and subsequently. Defendant failed to use reasonable skill and care in that
25 SCHULMAN negligently and carelessly:
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1 (a) Allowed at least one fake document to be placed in evidence by
2 Mark Bresee, the District's lawyer, without pointing out the
3 significance of the false statements in the false document,
4 especially after Werlin admitted that the document represented by
5 Parham and Rajcic's attorney to be the November 21, 2001 report
6 by Richard Werlin was not actually the document Richard Werlin
7 gave to Plaintiff on November 21, 2001. It is a felony to
8 knowingly produce into evidence a fake document, and this matter
9 should have been pursued. Professional courtesy should not be
10 allowed to destroy a client's career.

11 (b) failed to demand that missing documents be produced, even though
12 1) there were glaring omissions in consecutively numbered
13 documents, 2) notes by Cindy Miller, official note-taker, were
14 missing, 3) SCHULMAN caused Plaintiff to believe that missing
15 pages would be produced but she didn't bother to demand them, 4)
16 failed to show documents to Plaintiff in a timely manner, possibly
17 so Plaintiff wouldn't see was missing and insist that missing
18 documents be produced.

19 (c) failed to put Jo Ellen Hamilton on the stand to contradict Richard
20 Werlin's testimony that Ms. Hamilton feared for her life (**Exhibit**
21 **3**) and therefore Richard Werlin had to remove Plaintiff from her
22 classroom. Ms. Hamilton had testified in her deposition (**Exhibit**
23 **4**) that she had had no fear for her life and had not been distraught,
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1 and had only called Mr. Werlin to ask about a meeting;

2 SCHULMAN also failed to put Ms. Hamilton on the stand to
3 testify that Mr. Werlin had suggested that she call him, and that he
4 was not surprised as he claimed in his testimony.

5 (d) After having refused to look at documents which Plaintiff brought
6 to her office, telling Plaintiff to take them home, SCHULMAN also
7 refused to place into evidence multiple copies of documents
8 Plaintiff brought to the hearing. SCHULMAN brought empty
9 boxes to the hearing to pretend she had lots of evidence. By these
10 actions SCHULMAN caused the Commission to think Plaintiff was
11 lying when she testified that she had written letters to the board that
12 were not in evidence nor were they located in the many bankers'
13 boxes which Schulman had brought.

14 (e) didn't question Richard Werlin as to whether Linda Watson had
15 called him on same night as Jo Ellen Hamilton, allowing him to
16 evade stating whether or not Linda called. The knowledge that Ms.
17 Watson had made an accusation which was deemed untrue and
18 unreliable by the District when it asked Plaintiff to come back to
19 work, would have put Linda's later allegations into question. Even
20 though the District's lawyer as much as admitted that Ms. Watson
21 had called Richard Werlin, and Werlin very likely would have
22 admitted it if asked directly, SCHULMAN ignored the important
23 question of Linda Watson's credibility.
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1 19. Plaintiff is informed and believes, and on the basis of that information and
2 belief alleges, that had defendant used proper skill and care in her representation of
3 Plaintiff, Plaintiff would have prevailed in her administrative hearing since the above-
4 mentioned evidence, if presented, would have made it clear that her dismissal was a
5 violation of the Labor Code, the State and Federal Constitutions, and had been
6 accompanied by gross misconduct on the part of the School District.
7

8 20. As a direct and proximate result of the above-described negligence and
9 carelessness of Defendant SCHULMAN, Plaintiff was damaged in that the
10 Commission on Professional Competence upheld Plaintiff's dismissal from
11 employment and Plaintiff suffered loss of her career and livelihood, including salary
12 and future benefits, and severe emotional distress in an amount according to proof at
13 trial.
14

15 WHEREFORE, plaintiff requests judgment from all defendants sued in above
16 causes of action as follows:

17 1. Plaintiff believes that since Plaintiff's civil tort action was filed before the School
18 Board voted to terminate her, and since the District had caused significant damage to
19 Plaintiff before she was terminated, that the amount of damages caused by
20 SCHULMAN's negligence can only be calculated after Plaintiff's civil suit against the
21 District and other individuals is decided.
22

23 2. For actual damages for loss of career and livelihood, and future salary and benefits
24 and for cost of representation at administrative hearing, and emotional damages
25 according to proof:
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1 3. For general damages for loss of career and livelihood, and future salary and
2 benefits and for cost of representation at administrative hearing, and emotional
3 damages according to proof:

4 4. Special damages for loss of career and livelihood, and future salary and benefits
5 and for cost of representation at administrative hearing, and emotional damages
6 according to proof:

7 5. for pain and suffering according to proof;

8 6.. Cost of suit;

9 7. Such further relief as the court deems proper.
10

11
12 January 6, 2004.



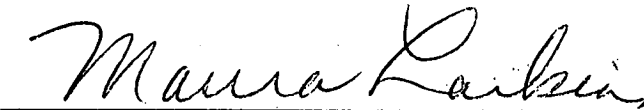
13 MAURA LARKINS

14 VERIFICATION

15 I, MAURA LARKINS, am the plaintiff in the above-entitled action. I have read the
16 foregoing complaint for negligence and know its contents. The same is true of my
17 own knowledge, except as to those matters which are alleged on information and
18 belief, and as to those matters, I believe them to be true.
19

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.
22

23
24 January 6, 2004



25 MAURA LARKINS
26
27
28

EXHIBIT 1

Schulman & Schulman

Elizabeth Schulman
Mehryn J. Schulman

A.P.C.
Attorneys at Law
1551 Fourth Avenue
Suite 502
San Diego, California 92101-3153

Telephone: (619) 238-0303

March 27, 2003

Maura Larkins
1935 Autocross Court
El Cajon, California 92019

Re: *Petition for Writ of Mandate*

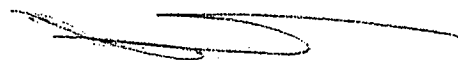
Dear Ms. Larkins:

Thank you for your fax of 03/26/03. You have previously indicated you did not have funds to appeal the Commission's decision. I have a longstanding office policy of not providing self-help to clients to pursue matters *in pro per*.

There are C.E.B. books available at law libraries on *mandamus* and administrative *mandamus*, which set forth the proper forms, procedures, and timelines. You may also wish to refer to C.C.P. §1085, *et seq.* More specifically, you may wish to study C.C.P. § 1094.5 and 1094.6. C.C.P. §1094.6(b) requires a petition to be filed no later than the ninetieth day following the date on which the decision becomes final with respect to any commission decision. In an abundance of caution, I may have previously told you 60 days.

I am unable to handle this matter with my current workload. I *discourage* you from proceeding on your own. I wish you well.

Very truly yours,



Elizabeth S. Schulman

ES:aja

EXHIBIT 2

1
2 MAURA LARKINS
3 1935 Autocross Court
4 El Cajon, CA 92019
5 619 660 6955

6 Plaintiff in pro per

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 MAURA LARKINS,
11 Petitioner,

12 vs.

13 COMMISSION ON PROFESSIONAL
14 COMPETENCE,
15 Respondent

16 CHULA VISTA ELEMENTARY SCHOOL)
17 DISTRICT, Real Party in Interest.)
18

) Case No. GIC 810661

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)
) PETITIONER'S MEMORANDUM
) OF POINTS AND AUTHORITIES
) IN SUPPORT OF PETITION FOR
) WRIT OF MANDATE
)
)

19 Comes now Petitioner and offers the following Memorandum of Points and
20 Authorities in support of her Petition for Writ of Mandate.

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22 I. SUMMARY AND OVERVIEW OF EVIDENCE

23 A. FEBRUARY 12, 2001--PETITIONER REMOVED FROM CLASSROOM
24 BY ASSISTANT SUPERINTENDENT WERLIN DUE TO
25 ALLEGATIONS THAT SHE WAS GOING TO KILL TWO TEACHERS.
26

- 1 B. MARCH 24, 2001--PETITIONER WAS ASKED TO RETURN TO HER
2 CLASSROOM WITHOUT ANY INVESTIGATION.
- 3 C. MARCH 27, 2001--PETITIONER WAS TOLD NOT TO RETURN TO
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14 ASSISTANT SUPERINTENDENT WERLIN AGREED TO
15 INVESTIGATE ALLEGATIONS AGAINST PETITIONER.
- 16 H. JULY 2001--THE SUPERINTENDENT REFUSED TO REMOVE MR.
17 WERLIN AS SUPERINTENDENT'S DESIGNEE FOR HANDLING
18 PETITIONER'S GRIEVANCES;
- 19 I. AUGUST 13, 2001--PETITIONER WAS TOLD SHE WOULD BE ON
20 ADMINISTRATIVE LEAVE THE FOLLOWING YEAR.
- 21 J. SEPTEMBER 2001--WERLIN BEGAN FAXING PETITIONER WHEN
22 HER LAWYER WAS OUT OF TOWN, DEMANDING THAT SHE
23 COME IN AND MEET WITH HIM; PETITIONER REFUSED.
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- 1 K. SEPTEMBER 2001--PETITIONER AND HER ATTORNEY EACH
2 WROTE TO THE DISTRICT REGARDING MR. WERLIN'S ACTIONS.
3 L. SEPTEMBER 26, 2001--PETITIONER'S PAY WAS STOPPED; SHE
4 REQUESTED A FULL EVIDENTIARY HEARING; THE DISTRICT
5 REFUSED;
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7 WORK; PETITIONER SAID SHE WOULD NOT RETURN UNTIL
8 THERE HAD BEEN AN INVESTIGATION.
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10 O. NOVEMBER 14, 2001--PETITIONER WAS THREATENED WITH
11 DISMISSAL.
12 P. NOVEMBER 21, 2001--MR. WERLIN GAVE PETITIONER THE ONE
13 AND ONLY DISTRICT REPORT ABOUT HER CASE;
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15 LETTERS ATTEMPTING TO SETTLE HER PENDING LAWSUIT
16 R. DECEMBER 2001--PETITIONER'S GRIEVANCES WERE
17 SUMMARILY DENIED BY MR. WERLIN.
18 S. FEBRUARY 2002--PETITIONER FILED A PERB CHARGE AGAINST
19 THE DISTRICT.
20 T. MARCH 2002--PETITIONER FILED A LAWSUIT AGAINST THE
21 DISTRICT.
22 U. MAY 7, 2002--THE SCHOOL BOARD VOTED TO DISMISS
23 PETITIONER.
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1 II. THE COMMISSION ABUSED ITS DISCRETION IN ITS DECISION TO
2 DISMISS PETITIONER.

3 III. THE COMMISSION'S FINDINGS ARE NOT SUPPORTED BY THE EVIDENCE.

4 IV. THE COMMISSION'S DECISION IS NOT BASED ON THE FINDINGS.

5 V. THE COMMISSION FAILED TO PROCEED IN THE MANNER REQUIRED BY
6 LAW.

7
8 A. THE COMMISSION MISCONSTRUED THE LAW.

9 1. THE COMMISSION FOUND THAT IT IS REQUIRED TO
10 BELIEVE THAT "THE EXISTENCE OF A FACT IS MORE
11 PROBABLE THAN ITS NONEXISTENCE."

12 2. THE COMMISSION MISCONSTRUED CALIFORNIA EDUCATION
13 CODE SECTIONS 44932(a)(7), 44932(a)(5) AND 44939.

14 B. THE COMMISSION VIOLATED THE RULES OF EVIDENCE

15 C. THE COMMISSION VIOLATED PETITIONER'S CONSTITUTIONAL
16 RIGHT TO PETITION FOR REDRESS OF GRIEVANCES BY RULING THAT
17 PETITIONER MAY BE DISMISSED FOR FILING GRIEVANCES AND A LAWSUIT.
18

19
20 TABLE OF AUTHORITIES

21
22 *Board of Education v. Matthews* (1957) 149 Cal.App.2d 265

23 *Board of Education v. Swan* (1953) 41 Cal.2d 546

24 *Gardner v. Commission of Professional Competence* (1985) 164 Cal.App.3d 1035

25 *Governing Board of the Oakdale Union School District V. Seaman* (1972) 28 Cal. App.3d 77

26 *Hanley v. Murphy* 40 Cal.2d 572 [255 P.2d 1]
27

1 *Hayman v. city of Los Angeles* 17 Cal.App.2d 679 [62 P.2d 1047]

2 *In re Micheal G.* (1998) 63 Cal.App.4th 700

3 *Woodland Joint Unified School District v. COMMISSION on Professional Competence*
 4 (1992) 2 Cal.app.4th 1429

5
6
7 **I. SUMMARY AND OVERVIEW OF THE EVIDENCE**

8 **A. FEBRUARY 12, 2001--PETITIONER WAS REMOVED FROM HER**
 9 **CLASSROOM BY ASSISTANT SUPERINTENDENT WERLIN DUE TO**
 10 **ALLEGATIONS THAT SHE WAS GOING TO KILL TWO TEACHERS.**

11 This case addresses the nightmare scenario which developed in CHULA VISTA
 12 ELEMENTARY SCHOOL DISTRICT when a false accusation was thrown into a human
 13 resources department which had a policy of keeping no written records of investigations and
 14 no written records of personnel actions connected to those investigations. In addition, the
 15 Superintendent was unable or unwilling to exercise any supervision over the actions of the
 16 Assistant Superintendent of Human Resources Richard Werlin.
 17

18 Petitioner Maura Larkins, was removed from her classroom and placed on
 19 administrative leave on February 12, 2001 due to wild rumors that she was going to kill two
 20 teachers. To this day, she has never been told what caused anyone to make such statements.
 21 To this day, neither those allegations nor the later allegation that she was going to come to
 22 school and shoot *everybody* have ever been retracted.
 23

24 And yet, at her termination hearing, not one teacher or administrator testified to ever
 25 having witnessed Petitioner saying or doing anything to cause anyone to fear for his or her
 26 life.
 27

1 In fact, the District's only two witnesses, Assistant Superintendent of Human Resources
2 Richard Werlin and Principal Gretchen Donndelinger, testified under oath that Mrs. Larkins
3 was removed from her position because teacher Jo Ellen Hamilton called Mr. Werlin at home
4 on February 10, 2001 and reported an incident which had occurred on February 6, 2001.
5 Mrs. Hamilton's written account of the incident was accepted into evidence (Exhibit R-25).
6 It describes a simple conversation.
7

8 It is simply not believable that Petitioner would be removed from her classroom
9 because of the event described in Exhibit R-25. And it is even more preposterous that the
10 COMMISSION found that such removal was reasonable for the reasons stated by the District
11 (Factual Finding 12). The action only becomes reasonable if one believes the testimony of
12 Petitioner Maura Larkins, which is in stark contrast to the testimony of the District's two
13 witnesses.
14

15 The evidence indicates that the hazing Mrs. Larkins endured before her Jan 23, 2001
16 letter (Exhibit 9) got out of hand after she informed her principal about it.

17 On February 12, 2001, Mr. Werlin told Mrs. Larkins that two teachers and Principal
18 Donndelinger had reported to him that Mrs. Larkins had the intent to kill teachers and the
19 capability to do so. Petitioner was placed on administrative leave. On about March 7, 2001,
20 Mr. Werlin illegally changed her administrative leave to sick leave.
21

22 **B. MARCH 24, 2001--PETITIONER WAS ASKED TO RETURN TO**
23 **HER CLASSROOM WITHOUT ANY INVESTIGATION.**

24 Mr. Werlin had no contact with Mrs. Larkins until March 24 and 25, 2001, when he
25 called her at her home and asked her to return to work as soon as possible.
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1 Mrs. Larkins was concerned because no investigation had been done by the district, and
2 the accusations hadn't been retracted, and the teachers who had made the false accusation
3 had gotten away with it completely. They had destroyed Mrs. Larkins' reputation, and
4 damaged her students, and had spread rumors of guns and violence so that a growing number
5 of teachers were frightened. Ominously, these teachers still had the full support of the
6 administration.
7

8 Mrs. Larkins said that she would be happy to help her substitute, but that a meeting
9 needed to be held to discuss how she would be protected from further false accusations. Mr.
10 Werlin offered a twenty-minute meeting. Mrs. Larkins said that would not be sufficient.
11 Mrs. Larkins went to school to help her substitute on March 26, 2001, and was welcomed by
12 Principal Donndelinger.
13

14 **C. MARCH 27, 2001--PETITIONER WAS TOLD NOT TO RETURN TO**
15 **DISTRICT PROPERTY.**

16 On March 27, 2001, Mrs. Larkins went to school again, to attend a meeting with Dr.
17 Donndelinger and parents about her situation. Dr. Donndelinger admits that she did not tell
18 Mrs. Larkins on March 26 that she shouldn't come to school. Dr. Donndelinger admits she
19 welcomed Mrs. Larkins on March 27, 2001. But Dr. Donndelinger did not allow Mrs.
20 Larkins to attend the meeting of which she herself was the topic! Mrs. Larkins told Dr.
21 Donndelinger that the charges that she was going to kill people were very serious and needed
22 to be discussed before she could come back.
23

24 Dr. Donndelinger called Mr. Werlin, who came and took Mrs. Larkins to a place
25 outside the gate of the school where there were no witnesses. He said a few pleasantries,
26
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1 then stood silent. Mrs. Larkins left because he seemed to want her to leave, although he
2 didn't say so. Petitioner's account of the event appears on page 340 of the hearing transcript.

3 After Mrs. Larkins left, Mr. Werlin spread the story to teachers that Mrs. Larkins had
4 come to school without permission. He claims that he told Petitioner, *during the very same*
5 *conversation in which he asked her to return to work*, not to set foot on campus. The story
6 he spread was that he had told Mrs. Larkins on March 27 that she had to leave, and that she
7 had gone berserk, exhibiting symptoms which might best be described as some sort of spastic
8 fit.
9

10 If Mr. Werlin's story were true, wouldn't Mr. Werlin require Mrs. Larkins to undergo a
11 psychological examination under the Ed Code Section 44942, or at least be checked by a
12 medical doctor for motor or neurological disorders? But in order to require a fitness-for-duty
13 evaluation, Mr. Werlin would have had to put his March 27 story down in writing and give it
14 to Mrs. Larkins. He required nothing but a Kaiser return-to-work form.
15

16 Petitioner believes that the first obligation of the District is to protect the safety of
17 children and adults. Mr. Werlin never took any action to protect anyone from physical
18 danger. He never, not once, interviewed Mrs. Larkins after February 12, 2001. He never
19 required a fitness-for-duty evaluation. He never questioned Mrs. Larkins' accusers.
20

21 On March 27, 2001, Mr. Werlin apparently decided that Mrs. Larkins would never
22 come back. He testified at her termination hearing that she never did return to work after this
23 alleged incident. The District's lawyer had to prod him to get him to remember that just
24 eight days after this alarming incident, he had asked her to return to her classroom. One can
25 understand Mr. Werlin's confusion on the witness stand. He had just described Mrs.
26 Larkins' behavior as bordering on psychosis (Court Reporter's transcript page 65:25 to page
27
28

1 66:9), and then he was called upon to describe how, just eight days later, he had asked her to
2 come back to work.

3 Mr. Werlin's testimony fell flat. He had no explanation for this.

4 Mrs. Larkins' testimony explains what happened. Mrs. Larkins sent Mr. Werlin a five-
5 page fax on April 3, 2001. The next day Mr. Werlin asked her to return to work. The full
6 five-page April 3 fax is not among the exhibits, however, in addition to Exhibit 17, which is
7 the first page of the fax, we have Exhibit R-28, page 17, which is the second page of the fax.
8 The other three pages of the fax consisted of the remaining pages of the restraining order
9 against Kathleen Elton.

10 Kathleen Elton

11 On April 3, 2001, Mrs. Larkins had begun to suspect that the allegations about her
12 might have originated with her ex-sister-in-law, Kathleen Elton. Ms. Elton was homeless
13 and unemployed when Mrs. Larkins allowed her to stay in a building which had belonged to
14 Mrs. Larkins' deceased father.

15 About the same time, Mrs. Larkins found that her own brother, who was co-
16 administrator with Mrs. Larkins of their father's estate, had deceived her about the amount of
17 money taken by him out of estate accounts. She told him not to take any more money out,
18 and he became enraged.

19 Perhaps in an effort to prove the hypothesis that no good deed goes unpunished, Ms.
20 Elton, who has experience as a stage actress, and her ex-husband, Mrs. Larkins' brother, told
21 police that Mrs. Larkins was trespassing on her deceased father's property. Ms. Elton told
22 police that Mrs. Larkins had a gun, and convinced them that Mrs. Larkins was a dangerous
23 person. The police stormed the building and arrested Mrs. Larkins.
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1 It is clear from the evidence regarding the District's dramatic reaction to Mrs.
2 Larkins' April 3, 2001 fax, Exhibit 17, that the District had utilized the police report about
3 Mrs. Larkins as a basis for its action against Mrs. Larkins on February 12, 2001. As it
4 happens, it is a misdemeanor to utilize a record of an arrest which did not lead to a conviction
5 to determine any aspect of an individual's employment (Labor Code section 432.7).
6

7 It is understandable that the District did not want the truth revealed about this. But it
8 could and should have made sure that the accusers understood that the false allegations
9 would not be allowed to continue. so that she could go back to work in peace.

10 Instead, Richard Werlin prepared the ground for Mrs. Larkins to be taken out again.
11 He started on the very day he asked her to return to work.

12 **APRIL 4, 2001--PETITIONER WAS ASKED TO RETURN TO HER CLASSROOM**
13 **WITHOUT ANY INVESTIGATION.**
14

15 Mr. Werlin seldom puts things in writing. He made no written record that Mrs.
16 Larkins was asked on April 4, 2001 to return to work, and that she did return to work after
17 spring break. He later told the clerk in the payroll office to record that Mrs. Larkins had
18 never come back to work at all in April 2001. However, there is a document which confirms
19 that Mrs. Larkins was asked back. It is Exhibit 19, Dr. Donndelinger's April 6, 2001 letter to
20 parents
21

22 Mr. Werlin's April 4, 2001 letter to Mrs. Larkins (Exhibit 18) is an example of an
23 instance where Mr. Werlin violated his own policy of not putting things in writing.
24 Unfortunately, the document is entirely deceptive. This April document states that Mrs.
25 Larkins is being placed on administrative leave in February! It deceptively orders her to stay
26 away from all district property, when the cabinet of CHULA VISTA ELEMENTARY
27

1 SCHOOL DISTRICT had already made the decision to ask her to return to work. Mrs.
2 Larkins understood Mr. Werlin's feelings of humiliation and frustration when he found that
3 the cabinet felt he had made a mistake on February 12, 2001. But Mrs. Larkins failed to
4 perceive the depth of his anger.

5 Mr. Werlin's April 4 letter is a clear attempt to create a hostile work environment for
6 Mrs. Larkins. In hindsight, Mrs. Larkins realizes that she was doomed from the moment she
7 received that letter. She went back to work expecting that allegations that she was going to
8 kill people would subside. They did not. Werlin had been working to create an atmosphere
9 of hysteria at Castle Park Elementary School.

10 Staff members were not encouraged to welcome her back to campus. Maria Beer's
11 notes (page 22 of Exhibit R 28—in evidence) show that show Dr. Donndelinger said, "We
12 are not answering questions now. You will have a chance to air your concerns at a mediated
13 meeting." Before Mrs. Larkins returned to work in April, no meetings were held with
14 teachers to tell them that the allegations that Mrs. Larkins had a gun or that Mrs. Larkins had
15 behaved as if she would kill teachers groundless. Teachers were not asked to retract their
16 accusations. There was no effort to prevent more false accusations, in fact, just the opposite
17 effort was made. On March 28, 2001, the administration told Jo Ellen Hamilton and Kathy
18 Bingham, "Maura Larkins' behavior is irrational. She is not permitted on campus or any
19 campus until further notice" (Exhibit 14 page 24).

20 Some teachers were nervous, perhaps out of guilt, perhaps because Mr. Werlin
21 whipped up fears with his story of March 27 spastic behavior which he has never retracted.
22 Petitioner now knows that there were allegations that Mrs. Larkins had a gun. Mr. Werlin
23 did not deny these allegations. The District, in the entire year that passed before voting for
24

1 dismissal, never asked or allowed Mrs. Larkins to hear the allegations against her or respond
 2 to them. Only one teacher ever presented his allegations (See Alan Smith's notes--Exhibit R
 3 24).

4 When Mrs. Larkins went back to work on April 16, 2001, Linda Watson, in
 5 particular, had apparently decided to make up some stories which would retroactively justify
 6 her February 12, 2001 phone call. She was clearly afraid of being found out to have made a
 7 false accusation. According to page three of her own notes in evidence, she was worried
 8 about a lawsuit. And she managed to throw herself into a tizzy with worries that she would
 9 have to take a lie detector test. She did not get that idea from Mrs. Larkins.

10
 11 **E. APRIL 20, 2001--PETITIONER WAS TOLD NOT TO RETURN TO DISTRICT**
 12 **PROPERTY.**

13
 14 Petitioner wasn't allowed at a meeting in Dr. Donndelinger's office on April 20, 2001
 15 of which she was the topic of discussion--even though she was sitting outside door waiting.

16 At that meeting Karen Snyder says that the staff is afraid she might have a gun (Exhibit
 17 14, page 40). Mr. Werlin left the fear hanging in the air.

18 Mrs. Larkins was sent home without ever being allowed to speak, and within a couple
 19 of hours was told she was on administrative leave again.

20
 21 **F. APRIL 21, 2001--A POLICE PRESENCE WAS ESTABLISHED AT CASTLE**
 22 **PARK ELEMENTARY SCHOOL WHICH CREATED AN IMPRESSION IN THE**
 23 **COMMUNITY THAT PETITIONER WAS DANGEROUS**

24 Exhibit 14 page 44 shows an intentional effort to create hostile environment by
 25 making a show of bringing police on campus when Mrs. Larkins wasn't even going to be
 26 there, as if they were afraid she'd come and do something terrible.
 27

1 MR. WERLIN used the police to instill physical fear in Mrs. Larkins.

2 **G. JUNE 2001--AT THE REQUEST OF PETITIONER'S ATTORNEY, ASSISTANT**
3 **SUPERINTENDENT WERLIN AGREED TO INVESTIGATE ALLEGATIONS**
4 **AGAINST PETITIONER.**

5 One of the most significant things in this case is that the district never heard Mrs.
6 Larkins story—never given a chance to hear and respond to allegations—although the fact
7 that she was asked back after each set of allegations indicates they didn't believe the
8 allegations themselves. The distric encouraged teachers to come up with allegations by
9 frightening them, and making sure they knew they wouldn't have to face the person accused.
10 Mr. Werlin was allowed to investigate Mrs. Larkins' claims of his dishonesty and violations
11 of the contract. The District failed to supervise the supervisor. Mr. Werlin never put the
12 March 27 story on the record until after Mrs. Larkins filed suit.

13
14
15 Mr. Werlin failed to keep his promises to Mrs. Larkins' attorney that there would be
16 an investigation. On page 761 of the Court Reporter's transcript Mr. Werlin states: "And we
17 agreed that we would continue at future meetings to attempt to get other teachers to come in
18 and to have dialogue so that there was no misunderstanding of what Ms. Larkins was being
19 accused of." On page 768, Mr. Werlin: "I'm not sure about the specific time lines, but I did
20 make a commitment to her that I would attempt to get the teachers to both meet with Ms.
21 Larkins, and also, if necessary, to try to get some written statements from them."

22
23 Mr. Werlin agreed that Petitioner would respond after she had heard all the
24 allegations. The only allegations she heard were Al Smith's (Exhibit R-24) The District did
25 not take all steps necessary to return Mrs. Larkins to work. Mr. Werlin never completed
26 investigation as he had agreed.
27
28

H. JULY 2001--THE SUPERINTENDENT REFUSED THE REQUEST OF THE EXECUTIVE DIRECTOR OF THE TEACHERS ASSOCIATION TO REMOVE WERLIN AS SUPERINTENDENT'S DESIGNEE FOR HANDLING PETITIONER'S GRIEVANCES; THE TEACHERS ASSOCIATION MADE NO FURTHER DEMANDS ON THE DISTRICT.

I. AUGUST 13, 2001--PETITIONER WAS TOLD SHE WOULD BE ON ADMINISTRATIVE LEAVE THE FOLLOWING YEAR, AND WOULD NOT BE ALLOWED TO TEACH IN ANY CLASSROOM.

Mr. Werlin did not offer Mrs. Larkins employment for the following year, and in fact told her in August she would not be allowed to teach at any school in the fall, but would be on administrative leave. In the hearing he denied this. On Page 770 of the Court Reporters Transcript he was asked, "Did you correspond with Ms. Havird to disabuse her of this particular view that is stated in the letter?" Mr. Werlin said :I don't recollect. (The District did not produce any evidence regarding any such letter from Mr. Werllin.)

J. SEPTEMBER 2001--WERLIN BEGAN FAXING PETITIONER WHEN HER LAWYER WAS OUT OF TOWN, DEMANDING THAT SHE COME IN AND MEET WITH HIM; PETITIONER REFUSED.

Mr. Werlin was not authorized by the contract to transfer Petitioner involuntarily. The purpose of any meeting with Mr. Werlin is suspect.

The Superintendent never made any attempt to supervise Mr. Werlin. She left Mrs. Larkins in his personal control, even after Mrs. Larkins had filed grievances and written letters (Exhibit 41) about his hostile and dishonest and illegal behavior.

1 The only meetings Mrs. Larkins refused to attend were those with Mr. Werlin. It is
 2 shameful that both the Superintendent and the Board completely ignored Petitioner's serious
 3 accusations against Mr. Werlin. He did not offer to meet with her with others present until
 4 he had suspended her without pay.

5 **K. SEPTEMBER 2001--PETITIONER AND HER ATTORNEY EACH WROTE**
 6 **SEVERAL LETTERS TO THE DISTRICT REGARDING THE DANGER TO**
 7 **PETITIONER FROM MR. WERLIN.**

8 **L. SEPTEMBER 26, 2001--PETITIONER'S PAY WAS STOPPED; SHE**
 9 **REQUESTED A FULL EVIDENTIARY HEARING TO WHICH SHE WAS**
 10 **ENTITLED BY THE CONTRACT REGARDING HER SUSPENSION WITHOUT**
 11 **PAY; THE DISTRICT REFUSED.**

12
 13
 14 Only after he placed her on suspension without pay did Mr. Werlin offer to have other
 15 administrators present at a meeting with Mrs. Larkins. Mrs. Larkins asked to meet with the
 16 Superintendent. She was entitled to a full evidentiary hearing. The DISTRICT refused to
 17 give her the hearing, claiming falsely that she was not suspended without pay. (She was not
 18 allowed to set foot at any school on September 26, and she wasn't paid—she was clearly
 19 suspended without pay.)

20
 21 The district never made any determination as to whether the charges against Mrs.
 22 Larkins were true. Two things are possible—the District took a completely innocent person
 23 out of her classroom twice, and destroyed her reputation, and never investigated or retracted
 24 the accusations. The other possibility is that the District took a potential mass murderer out
 25 of her classroom twice—but then asked her to come back again and again without ever
 26 investigating! Either way, they failed grievously in their obligation as holder of a public
 27

1 trust, and they violated Mrs. Larkins rights, and are not justified in dismissing an employee
2 whom they admit is highly qualified and has no mental or physical problems.

3 **M. OCTOBER 5, 2001--PETITIONER WAS TOLD TO REPORT BACK TO WORK;**
4 **PETITIONER SAID SHE WOULD NOT RETURN UNTIL THERE HAD BEEN**
5 **AN INVESTIGATION.**

6
7 Mrs. Larkins attended every meeting the Superintendent asked her to attend.
8 The Superintendent never investigated Mrs. Larkins' allegations.

9 Maria Beers testified many people feared Mrs. Larkins would come and shoot them
10 all.

11 **N. NOVEMBER 13, 2001--PETITIONER FILED 3 GRIEVANCES**

12 **O. NOVEMBER 14, 2001--PETITIONER WAS THREATENED WITH DISMISSAL.**

13 **P. NOVEMBER 21, 2001--MR. WERLIN GAVE PETITIONER THE ONE AND**
14 **ONLY REPORT HE EVER PREPARED ABOUT HER SITUATION; IT**
15 **CONTAINED NOTHING MORE THAN GENERAL ALLEGATIONS, WITHOUT**
16 **ANY SPECIFIC DATES, WORDS OR ACTIONS ON WHICH THE ALLEGATIONS**
17 **AGAINST HER MIGHT HAVE BEEN BASED.**

18
19 **Q. NOVEMBER AND DECEMBER, 2001--PETITIONER WROTE LETTERS TO**
20 **ONE COLLEAGUE, ADMINISTRATORS, AND SCHOOL BOARD MEMBERS,**
21 **ATTEMPTING TO PREVENT A LAWSUIT BY ASKING THOSE INVOLVED**
22 **TO REVEAL THE TRUE REASONS FOR FALSE ALLEGATIONS AGAINST**
23 **HER, BY ASKING THE DISTRICT TO MITIGATE HER DAMAGES BY**
24 **PAYING HER, AND BY ASKING THE DISTRICT TO AMELIORATE THE**
25
26
27

1 EXCEEDINGLY HOSTILE WORK ENVIRONMENT TO WHICH SHE HAD
2 BEEN ASKED TO RETURN; SHE WAS IGNORED BY ALL.

3 R. DECEMBER 2001--PETITIONER'S GRIEVANCES WERE SUMMARILY
4 DENIED BY MR. WERLIN.

5 S. FEBRUARY 2002--PETITIONER FILED A PERB CHARGE AGAINST THE
6 DISTRICT.

7 T. MARCH 2002--PETITIONER FILED A LAWSUIT AGAINST THE DISTRICT.

8 U. MAY 7, 2002--THE SCHOOL BOARD VOTED TO DISMISS
9 PETITIONER—SEVEN MONTHS AFTER SHE REFUSED TO REPORT TO
10 WORK; IT HAD NO REASON TO DISMISS HER SINCE SHE WASN'T
11 WORKING AND WASN'T BEING PAID; ITS MOTIVE WAS CLEARLY
12 RETALIATION
13
14

15 The District was happy to keep everything quiet, as long as Mrs. Larkins stayed home
16 and wasn't paid. But when Mrs. Larkins filed suit, the District figured that a good offense
17 was the best defense.
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1 **II. THE COMMISSION ABUSED ITS DISCRETION.**

2 The proceedings were undermined by bad faith, fabrication by the COMMISSION,
3 and failure to consider evidence, even denial that evidence existed when it was actually
4 undisputed evidence that had been accepted into evidence.

5 THE COMMISSION DID NOT PROCEED IN THE MANNER REQUIRED BY
6 LAW. The COMMISSION misconstrued the law, accepted evidence which should not have
7 been accepted, and took it upon itself to violate Petitioner's constitutional rights on behalf of
8 the school district.
9

10 Many of the decisions "factual findings" are actually allegations by the
11 COMMISSION regarding which no evidence was presented.
12

13 Of the 16 Legal Conclusions, 1, 7, 8, 9, 11 and 16 are invalid because they are based
14 on implied findings, and/or on findings which are not supported by evidence, and/or on
15 misconstruction of the law,
16 Legal Conclusions 2, 3, 4, 5, 6, 10, 14, and 15 are valid in themselves but were misconstrued
17 by the COMMISSION in reaching its decision.

18 The Commission's decision is so self-contradictory that one wonders if it didn't just
19 decide it wanted to dismiss Mrs. Larkins from her employment because she filed a lawsuit,
20 and then left it up to the judge to come up with 22 pages of allegations. The findings do not
21 merely ignore undisputed evidence, they boldly state it doesn't exist.
22

23 **III. THE COMMISSION'S FINDINGS ARE NOT SUPPORTED BY THE**
24 **EVIDENCE**

25 The District and the COMMISSION have latched on to any excuse they can lay their
26 hands on to justify District actions which were complete mistakes. The goal of the District
27

1 and the COMMISSION seems to be to smear Mrs. Larkins with unfounded allegations, in
2 order to create the illusion that the District's actions were justified.

3 In some instances the COMMISSION findings are obviously fabricated; in other instances,
4 the fabrications are less obvious, but equally, or possibly more, significant.

5 With 103 Findings of Fact, the COMMISSION managed never once to mention the fact
6 that this case is about someone whom many teachers feared would "come to school and kill
7 them all." Somehow, the COMMISSION felt it could completely ignore this fact. Ironically,
8 the teacher who was twice ordered to stay off school property, is being dismissed for NOT
9 coming to work.

10 To make its finding of Legal Conclusion 11, the COMMISSION ignored the evidence
11 which fulfills the requirements for a hostile work environment as set forth in Legal
12

13 Conclusion 10: The COMMISSION failed to consider:
14

15 (1) "The nature of the unwelcome acts." The actions taken against Mrs. Larkins
16 by Mr. Werlin were extremely serious. He participated in and encouraged serious
17 false allegations, which escalated and increased in number, and he removed her
18 from her classroom twice based on false allegations. Mrs. Larkins could not safely
19 return to work.

20 (2) "The frequency of the offensive encounters." The hostile acts were
21 remarkable in their frequency. After the first action taken against Petitioner on
22 February 12, the second event occurred after only one week back at work. This is a
23 very high level of frequency for being taken out of one's classroom on charges that
24 the district now claims have nothing to do with this dismissal. They have
25 everything to do with why Petitioner was afraid to go back to work.
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1 (3) "The total number of days over which all the offensive conduct occurred."

2 To this day the District has never investigated or retracted the allegations that
3 Petitioner was going to kill teachers. At this time the belief among many teachers
4 in the District is that Mrs. Larkins might come to school and shoot them all. This
5 work environment is too hostile for Mrs. Larkins to dare set foot in the district.

6 (4) "The context in which any offensive conduct occurred." The context was a
7 campaign by Mr. Werlin to destroy Mrs. Larkins' career. The evidence is
8 overwhelming that he slandered her to teachers and the principal of Castle Park
9 Elementary School, and solicited allegations against her, and promised her accusers
10 that they would never have to face the accused.
11

12 The environment was hostile because Mrs. Larkins was refused protection of the
13 contract, CVE wouldn't arbitrate although it admitted it was wrong for Mr. Werlin to handle,
14 Werlin had total personal, arbitrary control over her, including the ability to make absolutely
15 any allegation about her and act on it, with no oversight by Superintendent or CVE.
16

17 On page 865 of the Court Reporter's transcript, Petitioner's counsel explained that the
18 "hostile environment" concept was not being used in this case as a "sword," a complaint used
19 to establish liability of the employer, but as a defense against a charge filed by the employer.
20

21 **LEGAL CONCLUSION 7. Mrs. Larkins Was Guilty of Insubordination (Persistent**
22 **Violations of District Rules)**

23 **"Mrs. Larkins Was Guilty of Insubordination."**

24 **Factual Findings 50, 53, 56, 59 and 73 declare that documents accepted into**
25 **evidence and recorded in Judge Ahler's own handwriting do not exist. (See Clerk's**
26 **Record)**
27

1 **Factual Finding 50** is contradicted by Exhibit 62, Pamela Havird's letter to Mr. Werlin
 2 dated September 10, 2001.

3 **Factual Finding 53** is contradicted by Exhibit R 34.

4 **FACTUAL FINDING 56:**

5 The first part of the letter is a repeat of the information in the September 17 letter, to which
 6 Pamela Havird had already responded one day earlier, in her September 19, 2001 letter
 7 (Exhibit R34); the second part of the letter was answered by Mrs. Larkins on September 27,
 8 2001 (Exhibit 33).

10 **FACTUAL FINDING 59:**

11 The COMMISSION outdid itself in making this finding. In this finding the
 12 COMMISSION denies the existence of not just one but *six* responses sent by MRS.
 13 LARKINS to the district. Five of these responses are in evidence (Exhibits 33, sent to two
 14 people, Exhibit 41, pages 4 and 5, and Exhibit 36.) Although the sixth response was not
 15 taken into evidence, its existence is proven by other evidence, specifically, the
 16 Superintendent's letter answering it (Exhibit 39, page 5).

18 **FACTUAL FINDING 73:** Neither Mrs. Larkins nor Attorney Havird provided
 19 the DISTRICT with any writing suggesting that Mrs. Larkins' refusal to work was
 20 supported by or justified under the DISTRICT/CVEA agreement.

21 This finding is contradicted by Exhibit 41, the November 13, 2001 Level I Grievance
 22 filed by Mrs. Larkins regarding Safety. At this time, Mrs. Larkins was entitled to a full
 23 evidentiary hearing regarding the September 26 change from administrative leave to unpaid
 24 suspension. this pay stoppage was a violation of the contract for several reasons, as Mrs.
 25 Larkins points out in Exhibit 37.

1 The following sentence in LEGAL CONCLUSION 11 (page 25 of the decision) is
2 simply preposterous: "The conduct Mrs. Larkins complained about did not prevent her
3 from meeting her teaching responsibilities."

4 What hearing were these three triers of fact attending?

5 The hostile environment Mrs. Larkins complained about was the one where she was
6 repeatedly placed on administrative leave any time someone made up a story. This was done
7 twice, within two-and-a-half months. The tiniest bit of rational thought applied to the
8 undisputed evidence allows no other possible conclusion than that Mrs. Larkins was thwarted
9 in her ability to fulfill her responsibilities as a teacher when she was on administrative leave.
10 Mrs. Larkins suffered extreme harassment. She was taken out of classroom due to false
11 accusations, the most extreme of which was that she would come to school and kill
12 everybody. The police were called to create an atmosphere of fear. The allegations have
13 never been retracted to this day.
14

15 Petitioner was not persistent in the face of opposition. There was no opposition to
16 Mrs. Larkins not reporting to work. The evidence shows that what Werlin writes for the
17 record and what he says in person or on the phone are completely different, for example the
18 shocking contradiction between his April 4 letter and his concurrent personnel action. They
19 asked me on only one occasion, October 5, 2001 to report to an assignment.
20

21 Neither the findings nor the evidence support LEGAL CONCLUSION 11: "To
22 the extent that Mrs. Larkins experienced difficulty at Castle Park Elementary School,
23 Principal Dr. Donndelinger and Assistant Superintendent Mr. Werlin made
24 reasonable and sincere efforts to accommodate Mrs. Larkins' situation."
25
26
27

1 When Mr. Werlin and Dr. Donndelinger asked Mrs. Larkins to return to school in
 2 April, 2001, they did not even assure teachers that Mrs. Larkins didn't have a gun. They did
 3 not admit that the accusations against her were false. Teachers had expressed worries; they
 4 were "on eggshells," but the administration encouraged their hostility to Mrs. Larkins.

5 When Mrs. Larkins was asked to return in April of 2001, she didn't know she was
 6 returning to a hazardous duty, but it became clear within a week that Werlin would do
 7 whatever he had to to find an excuse to remove her again. By the fall of 2001, Mrs. Larkins
 8 was fully aware of how hazardous her work environment was.

9
 10 **IV. THE COMMISSION'S DECISION IS NOT BASED ON ITS FINDINGS.**

11 The COMMISSION's decision is not supported by its findings. The decision is
 12 supported by implied findings.

13
 14 Legal Conclusions 8, 11, and 16 contain allegations by the COMMISSION which are
 15 not based on findings. Legal Conclusion 8 states that Mrs. Larkins has a "stubborn,
 16 unforgiving nature, a trait of character was not remediable." But there is no finding about
 17 whom or what Mrs. Larkins was supposed to forgive and did not forgive. Petitioner filed suit
 18 in order to get her job back, not because she failed to forgive anyone.

19 The findings supported by implied findings. The COMMISSION has not found that
 20 there were specific words or actions of Mrs. Larkins to support its conclusions about her
 21 character.

22
 23 The COMMISSION's legal conclusions contradict each other.

24 According the COMMISSION, no harm was done to Mrs. Larkins. There was no
 25 hostile environment, no violation of the contract, no violation of the law against her. But the
 26 conclusion that Mrs. Larkins was "unforgiving" implies a finding that there was something to
 27

1 forgive. The COMMISSION not only based its Legal Conclusion 8 on implied findings, but
2 those findings don't even support the conclusion—they contradict it. The finding of an
3 "unforgiving nature, a trait of character that was not remediable" is a virtual admission that
4 Mrs. Larkins suffered harm, that Mrs. Larkins did indeed have a hostile environment. This
5 contradicts the statement in the very same Legal Conclusion 8 (and in legal conclusions 7
6 and 9) that Mrs. Larkins was insubordinate.

8 Legal Conclusion 11: "A reasonable person in Mrs. Larkins' situation would have
9 continued working and would have reported to work when directed to do so by the
10 Superintendent of Schools." Mrs. Larkins had reported back to work in April of 2001,
11 which seemed reasonable at the time. Within a week Mr. Werlin made his true intentions
12 clear. He was determined to remove her from her classroom, using any flimsy excuse he
13 could come up with. What he came up with was Exhibit R-24, Al Smith's notes, and Exhibit
14 20, Linda Watson's notes. In the summer he told he she would not be allowed to teach in
15 any school in the district the following year. When he asked her back in the fall, without an
16 investigation or a single retraction, she knew that it would be downright foolish, much less
17 unreasonable, to expose herself once again to Mr. Werlin's extreme hostility, and absolute,
18 arbitrary power over every aspect of her employment.

20 To be banned from every school in the district but one is a mark of Cain which has
21 never been placed on any employee of any school district to Petitioner's knowledge. It is a
22 clear signal that MRS. LARKINS was considered a persona non grata in the district, that she
23 was suspected of being dangerous and disruptive. This was not a hostile environment? How
24 did the COMMISSION determine how a reasonable person would respond? It is such a
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26
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24

1 malicious act, that it is difficult to find anything to compare it with, but it is certainly
2 comparable to the forms of harassment which have been ruled illegal in countless cases.

3 **V. THE COMMISSION FAILED TO PROCEED IN THE MANNER REQUIRED BY**
4 **LAW.**

5 **A. THE COMMISSION MISCONSTRUED THE LAW.**

6
7
8 **1. THE COMMISSION FOUND THAT IT IS REQUIRED TO BELIEVE**
9 **THAT "THE EXISTENCE OF A FACT IS MORE PROBABLE THAN ITS**
10 **NONEXISTENCE."**

11 The COMMISSION grievously misconstrued the "preponderance of the evidence"
12 standard of proof.

13
14 The COMMISSION states in its decision (Legal Conclusion 1, page 21): "The standard
15 of proof in this dismissal proceeding is a preponderance of the evidence. Petitioner agrees.
16 However, the COMMISSION goes on to state:
17 "The "preponderance of the evidence" standard requires a trier of fact to believe that
18 the existence of a fact is more probable than its nonexistence. See, *In re Michael G.*
19 *(1988) 63 Cal.App.4th 700.*"
20

21
22 This is not a typographical error. This sentence does indeed describe the standard of
23 proof which the COMMISSION used in making this decision. The COMMISSION
24 shockingly misconstrued the meaning of "preponderance of the evidence."

25 The Administrative Law Judge in this proceeding explained how the COMMISSION
26 would fulfill its responsibility to weigh the evidence: "... you know, who's right or wrong
27
28

1 and cunning and lying at the swimming pool, I don't think that's going to require more than
 2 a couple of minutes of discussion" (page 794 of the Court Reporter's transcript.). This is
 3 how the COMMISSION reached its stunning conclusion that Petitioner did not have a hostile
 4 work environment and that the District had behaved reasonably.

5
 6 Petitioner requests Judicial Notice of the *In re Michael G.* decision, from which the
 7 COMMISSION claims to have derived this definition of "preponderance of the evidence."
 8 Petitioner has been unable to discover a single line in *In re Michael G.* which discusses the
 9 meaning of "preponderance of the evidence." Only two mentions of "preponderance of
 10 evidence" were found by Petitioner. Under Roman numeral II, in the section titled "Standard
 11 of Proof," the court states, "...the Supreme Court of Alaska held the state court
 12 preponderance of evidence standard applied." Further on the court states, "Department
 13 points out that reasonable services must be proven by clear and convincing evidence... at the
 14 18-month review stage, proof by only a *preponderance of the evidence* is required." The
 15 case is about choosing between different standards of proof, not about defining them.

16
 17 The number of Findings of Fact in this case which fly in the face of undisputed
 18 evidence is mind-boggling. The three members of the COMMISSION have signed their
 19 names to a compendium of Findings and Legal Conclusions which is staggering in its self-
 20 contradictions and outright falsehoods.

21
 22 All the conclusions in this decision are invalidated by the COMMISSION's reliance on
 23 the improper standard of proof described in Legal Conclusion 1.

24 **2. THE COMMISSION MISCONSTRUED CALIFORNIA EDUCATION**
 25 **CODE SECTIONS 44932(a)(7), 44932(a)(5) and 44939.**
 26
 27
 28

- 1 A. The COMMISSION misconstrued the meanings of "persistent" and
- 2 "reasonable" in the context of "persistent violation of and refusal to obey
- 3 the school laws of the state or reasonable regulations prescribed by the
- 4 governing Board" in CALIFORNIA EDUCATION CODE SECTION
- 5 44932(a)(7).
- 6
- 7 B. The COMMISSION misconstrued the meaning of "evident unfitness for
- 8 service" in CALIFORNIA EDUCATION CODE SECTION
- 9 44932(a)(5).
- 10
- 11 C. The COMMISSION misconstrued "willful refusal to perform regular
- 12 assignments without reasonable cause, as prescribed by reasonable rules
- 13 and regulations of the employing school district" in CALIFORNIA
- 14 EDUCATION CODE SECTION 44939. The COMMISSION construed
- 15 this section of the law by proceeding as if the word "reasonable" were
- 16 nowhere to be found.
- 17
- 18 D. The COMMISSION failed to consider PETITIONER'S Affirmative
- 19 Defenses, including hostile environment, and to properly construe the
- 20 law regarding such defenses.
- 21
- 22 E. The COMMISSION improperly construed the MORRISON criteria.
- 23
- 24 F. The COMMISSION failed to consider rights of Petitioner according to
- 25 the contract, the Constitution, and the laws of California.

DISCUSSION

**PETITIONER'S REFUSAL ON OCTOBER 5, 2001 TO REPORT TO WORK WAS A
SINGLE ACT, NOT "PERSISTENT" REFUSAL**

27

1 During the seven months after October 5, 2001, the district never asked Petitioner to
2 come back to work. There was no persistent refusal to a district order. The District asked
3 once, Petitioner refused once. The Superintendent never offered to have a conference with
4 Mrs. Larkins to discuss the reasons for her transfer, as required by the contract, and no
5 investigation was ever conducted.
6

7 The threshold which must be reached in order to dismiss a teacher for violation of
8 Board rules and regulations, or failure to perform regular assignments, was addressed in
9 *Governing Board of the Oakdale Union School District V. Seaman* (1972) 28 Cal.
10 App.3d 77. The COMMISSION cites *Seaman* in legal conclusion 5, but misconstrues the
11 case egregiously.
12

13 *Seaman* applies very pertinently to this case, but supports a decision contrary to the
14 one made by the COMMISSION. The Court in *Seaman* states, "... respondent argues,
15 merely, that each day of appellant's absence was a separate violation of the school board's
16 regulations, and hence that the violation in this case met the "persistent" requirement of
17 subdivision (g) of section 13403...**The argument is specious. This is not a case where it**
18 **is reasonable to say that Mrs. Seaman's absence, by its very duration, amounted to a**
19 **"persistent" [28 Cal.App.3d 83] violation of the governing board's rules. Nor can it**
20 **be fairly said from the evidence presented that the teacher was motivated by an**
21 **attitude of continuous insubordination.** Mrs. Seaman had been employed by the district
22 for eight years, and there is no evidence in the record to prove that she ever violated a
23 school law or regulation of the governing board prior to the incident in question."
24

25 The district and the COMMISSION make the same **specious** argument as the
26 respondent in *Seaman*.
27

28 28

1 The COMMISSION misconstrues the case law by ignoring that a particular act
2 rarely constitutes unfitness for service, and certainly does not do so in this case.

3 Petitioner was ready and willing to come back to work as soon as it was safe.

4 The case law has insisted that one "particular act" rarely constitutes "evident unfitness for
5 service" and certainly not a "persistent violation of or refusal to obey prescribed rules and
6 regulations
7

8 The particular act in this case was when Mrs. Larkins told the District immediately on
9 October 5, 2001, which was the first and only occasion in which the District mentioned a
10 specific school site, that I did not feel safe until an investigation had been done and obviously
11 false allegations retracted. No student was forced to spend a single day without his regular
12 teacher because of my decision. The district had willfully and continually refused to protect
13 me from arbitrary actions due to slanders.
14

15 The COMMISSION also ignored the court's definition of "persistent violation" in
16 Seaman by failing to give proper weight to the words "continuing, especially in the face of
17 opposition...constantly repeated." The COMMISSION should have noted that there was no
18 opposition to Petitioner's not reporting to work after October 5, 2001. There was never a
19 letter or fax or phone call asking her to report to work other than October 5, 2001. You
20 notice that not even the November 14, 2001 letter threatening dismissal (Exhibit 42) directs
21 her to report to any assignment. It was made clear at the November 21, 2001 meetings with
22 Mrs. Larkins and her attorney that the District wanted Mrs. Larkins to quit.
23

24 The District's efforts to connect this case to *Board of Education v. Matthews* (1957)
25 149 Cal.App.2d 265 are inappropriate.
26
27
28

1 *Matthews* is about a teacher who decided "it was too cold and nasty and foggy up
2 here" (in Richmond), so she had "gone south to get warm." The teacher who drove down
3 to Los Angeles where she stayed for ten days without any further communication, and
4 when the school called, "all (her) interests in Richmond came rushing into (her) brain and
5 (she) did feel ashamed (she) had been gone so long and it dawned then, (she) had been
6 gone longer than (she should have been." The following year there were similar problems.

7
8 The District in its Memorandum (Exhibit J-4), cites *Matthews* to justify all three of
9 its charges against Mrs. Larkins. In so doing, it underlines the fact that all three charges are
10 based on a single act, Mrs. Larkins' refusal on October 5, 2001 to return to work without an
11 investigation and retraction.

12 *Matthews* makes it clear that the school authorities do not *have the power to make an*
13 *illegal rule.* *Matthews* did not concern a hostile work environment. The two cases could
14 hardly be more different.

15
16 COMMISSION's LEGAL CONCLUSION 4, "The refusal of a teacher to accept an
17 assignment...is, in essence, insubordination," fails to allow for laws allowing employees to
18 defend themselves.

19 The COMMISSION misconstrued *Board of Education v. Swan* (1953) 41 Cal.2d 546
20 by automatically applying the decision in *Swan* to this case without recognizing that refusal
21 to accept assignment is not automatically insubordination, but that an employee may defend
22 against a charge of insubordination by establishing that the conduct for which he or she is
23 being dismissed was justified. This COMMISSION incorrectly permits the district to disobey
24 the law and the contract.
25
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30

1 *Swan* concerned a principal who badmouthed the school board at a PTA meeting, and
2 who refused to be demoted to a teaching assignment. Mrs. Larkins was perfectly happy in
3 her teaching assignment for twenty-six years, then in 2001 was taken out of her classroom
4 and sent home twice, for months at a time, because of false allegations. Mrs. Larkins was
5 willing to go back to teaching as soon as it was safe, which required measures to stem the
6 rising tide of hysteria in the District, an end to the District's violations of the Collective
7 Bargaining Agreement, and an end to Assistant Superintendent Werlin's total, arbitrary, and
8 abusive control over every aspect of Mrs. Larkins' employment.
9

10 In *Swan*, the Court clearly states that not all employees are in the same category as
11 Ione Swan. The decision states, "The case of *Hanley v. Murphy*, 40 Cal.2d 572 [255 P.2d
12 1], is clearly distinguishable. There the superior officer acted without regard for the
13 prescribed civil service rules, and his alleged bad faith therefore became a material
14 consideration in determining the aggrieved employee's rights." Petitioner's contract clearly
15 required a conference, and reasonable necessity, and safety. It clearly allowed her to file
16 grievances, and forbade retaliation by the district when she did so. The law allows her to file
17 a lawsuit. The law specifically forbids retaliation when an employee files a PERB charge,
18 and when an employee reports illegal or criminal behavior to a public agency.
19

20 The Court in *Swan* refers to *Hayman v. City of Los Angeles*, 17 Cal.App.2d 679 [62
21 P.2d 1047] also rules that there are limits on the power of public employers: "Control over
22 public employees is not only a right but a duty, and in the discharge thereof a wide discretion
23 is allowed, *which will not be disturbed until the point of illegality is reached.*" In the instant
24 case, the weight of the evidence shows that the point of illegality was reached early in 2001,
25 and the illegal actions of the District have been growing in number ever since.
26
27

THE COMMISSION MISCONSTRUED PETITIONER'S RIGHTS

The Agreement provides teachers with rights regarding Employee Discipline, Safety, and Transfer which the District violated. Also, the California Ed Code and other laws provide for employee rights.

The COMMISSION's decision violates Petitioner's substantive rights conferred by another agency, and violates constitutional rights and rights under state law and the contract.

California law forbids retaliatory discharge when an employee files a PERB charge. A settlement offer may not be used in a court case. The COMMISSION misconstrued Article 5 of the Collective Bargaining Agreement.

The COMMISSION found in Factual Finding 2: "...Article 5.1 of the DISTRICT/CVEA agreement provided that the DISTRICT *retained all rights and authority* to direct the work of its employees." In making this finding, the COMMISSION ignored the section of Article 5.1 which states, "In addition, the DISTRICT retains the right to hire, classify, assign, promote, lay off, terminate and discipline employees, *except as otherwise provided in this Agreement or by law.*" There is a very significant difference between this article and the COMMISSION's interpretation.

Again and again in this decision the COMMISSION demonstrated its belief that the DISTRICT is above the law and the contract. In her June 9 grievance Mrs. Larkins enumerated some laws which had been violated, including freedom of speech and association, due process, telephone eavesdropping, slander, defamation of character. The COMMISSION incorrectly construed the law to mean that the District is not bound by these laws, or, apparently, any laws at all.

32

1 The District and Commission violate Petitioner's right to defend herself, to attempt to
 2 settle with those who had wronged her, and to file claims. The District is limited by United
 3 States Constitution and the Constitution and laws of California and the contract.

4 **FACTUAL FINDING 81.** Mrs. Larkins sent letters to several persons identified as
 5 expressing concerns regarding Mrs. Larkins' conduct at Castle Park Elementary School.

6 Threats of litigation were set forth in those letters.

7 Evidence shows Petitioner wrote to only one of her accusers, a person she liked, Michelle
 8 Leon-Schmach. Petitioner testified she couldn't believe Mrs. Schmach would be in on
 9 accusations, and was therefore attempting to settle with her before filing a lawsuit. As a
 10 settlement offer Petitioner asked only that Mrs. Schmach tell her the truth about how the
 11 accusations came about.
 12

13 **FACTUAL FINDING 74:** which the COMMISSION relied on in part to find
 14 Petitioner unfit for service, the COMMISSION makes specific mention of the fact that
 15 Petitioner "specifically" named Mr. Werlin and the Superintendent in her grievances.
 16 75-dismissal threat made day after grievances received—contract says there may be no
 17 retaliation for grievances, Article 5 says DISTRICT does not retain rights which have been
 18 eliminated in any other part of the agreement, 7.4.1 says "No reprisals of any kind will be
 19 taken by the DISTRICT or representatives of the DISTRICT against any grievant." The
 20 DISTRICT violates the contract with this decision which dismisses Petitioner for filing
 21 grievances.
 22

23 School Board members, School Superintendents, and Assistant Superintendents, just
 24 like Presidents of the United States, must respond in good faith to petitions for redress of
 25 grievances from employees and other citizens. Watchfulness in the citizen is the salvation of
 26
 27

1 the state, as it says on the walls of San Diego's Hall of Justice. The use of above-board legal
2 channels is a more honorable way of behaving than trying to prevail with false and secret
3 accusations.

4 **FACTUAL FINDING 83:** The COMMISSION cites as evidence of unfitness the
5 fact that I filed a lawsuit. Filing a lawsuit is a right protected by the constitution, in the right
6 to petition for redress of grievances. Petitioner's reputation was destroyed and she was
7 unable to work. It is a bizarre contradiction saying she is to be dismissed because she did not
8 report to work, and to say she is unfit for duty at the same time.

9
10 **FACTUAL FINDING 103:** The District offered numerous opportunities for Mrs.
11 Larkins to meet with Assistant Superintendent Mr. Werlin and with Superintendent Gil to
12 discuss her transfer from Castle Park Elementary School to a more suitable campus. Mrs.
13 Larkins refused to attend those conferences. In doing so, she waived any right to them. The
14 District and Superintendent substantially complied with Article 33.5

15
16 Undisputed evidence shows that Mrs. Larkins attended every meeting with the
17 Superintendent which she was offered. She was never offered a conference with
18 Superintendent Gil until after she wrote to Dr. Gil on September 27, 2001 suggesting that they
19 meet. Dr. Gil claimed she was not available in September. When Gil finally offered to meet
20 with Mrs. Larkins on October 5, 2001, Mrs. Larkins and her attorney attended the meeting.
21 At the meeting, Dr. Gil, in violation of the contract, refused to discuss the transfer.

22
23 This Factual finding is not only invalid, it is a ruling on a grievance (Exhibit 40)
24 which was not even accepted into evidence. Petitioner asks the reviewing court to
25 invalidate this finding.
26
27
28

34

1 On page 875 of the Court Reporter's Transcript Petitioner's right to sue is argued. The
2 lawsuit was reason they dismissed she was dismissed, but as counsel argues on page 890, the
3 law allows Mrs. Larkins to sue.

4 **The COMMISSION misconstrues the law regarding "unfitness for service."**

5 The COMMISSION has clearly based its conclusion that Petitioner has a
6 "temperamental defect," a "fixed character trait," on the findings that Petitioner filed
7 grievances, wrote letters, and filed a lawsuit.

8
9 The COMMISSION and District violate the contract by dismissing Petitioner because
10 she filed grievances. The COMMISSION is amazing in its boldness to actually state that
11 its decision is based on this. The original dismissal threat had been sent one day after
12 Plaintiff filed three grievances, but the district has tried to claim that this was not the
13 reason.

14
15 The "fixed character trait" is inferred from the fact that Mrs. Larkins did not
16 return to work under the conditions in effect, which were extremely unusual conditions
17 which very few teachers have been forced to face. It is one decision, one action. She
18 was asked once, illegally, to report to an assignment. The contract clearly requires a
19 conference with the Superintendent, not merely a directive. The Superintendent refused
20 this with the excuse that Petitioner had filed a tort claim. There is nothing in the contract
21 that says it may be disregarded in the event an employee files a tort claim. The tort
22 claim law was created so that government entities would have time to remediate wrongs
23 before becoming subject to a civil lawsuit. The District chose to do nothing to
24 remediate the wrong.
25
26
27
28

35

1 It was patently unreasonable to ask that in September 2001 Mrs. Larkins
 2 place herself in the private and personal charge of Mr. Werlin, an administrator who
 3 had made serious, uncorroborated accusations against her, and had taken the actions
 4 which the district claimed to want to reverse. It was grievously unreasonable of the
 5 district to put a teacher at such risk, and to make no effort to find out if the
 6 supervisor's behavior was dishonest and abusive. The district failed to supervise
 7 the supervisor.
 8

9 PETITIONER had reasonable cause to refuse to return to work, and to meet with Mr.
 10 Werlin, due to the extreme hostility and danger of each.

11 **THE COMMISSION MISCONSTRUED THE MORRISON CRITERIA AND**
 12 **IGNORED EVIDENCE REGARDING MORRISON CRITERIA**
 13

14 The Morrison criteria ask the COMMISSION to look at the motives of the teacher that
 15 caused her behavior. Grievances were filed in effort to get district to obey the law. To honor
 16 rights, to honor the values of the American justice system, The flag is a clear symbol of what
 17 she was trying to say, No reason to think acts would be repeated if charges retracted before
 18 going back. Mrs. Mrs. Larkins taught for twenty-seven years in the district, and never had
 19 any problem like this. She was forced into this by the district. It was the district's obvious
 20 goal, and Mr. Werlin was the perfect person to carry it out, to make it impossible for MRS.
 21 LARKINS to work in the district.
 22

23 **LEGAL CONCLUSIONS 8, 11 AND 16 (related to unfitness for service)**

24 **The COMMISSION states: "Termination of Mrs. Larkins will not have an adverse**
 25 **impact or chilling effect on Mrs. Larkins' constitutional rights or the constitutional**
 26 **rights of others."**
 27

28 36

1 This will certainly have a chilling and adverse impact on other teachers because the
 2 COMMISSION dismissed MRS. LARKINS because she attempted to bring the district into
 3 compliance with the law. Petitioner's constitutional right to petition for redress of grievances
 4 is violated by the COMMISSION's decision.

5 This decision dismisses Petitioner from employment on the basis of "evident
 6 unfitness for service" because she petitioned for redress of grievances. The findings
 7 on which the conclusion regarding her "evident unfitness for service" was based
 8 include:
 9

10 **Factual finding 74:** "...Mrs. Larkins filed additional grievances with the District,
 11 specifically naming Assistant Superintendent Werlin and Superintendent Gil in
 12 those grievances."

13 **Factual finding 82:** Mrs. Larkins filed several more grievances against the District
 14 in the months that followed.

15 **Factual finding 83:** On March 11, 2001, Mrs. Larkins filed a lawsuit against the
 16 District.
 17

18 To protect constitutional rights and for the public good, government entities must not
 19 assure accusers, as did the District, that they will not have to face those they have accused.
 20

21 Having courage doesn't mean a person lacks compassion.

22 Both evidence and testimony contradicts this. Concern for Michelle, Sandra Ornelas,
 23 Linda Watson, and, on January 26, 2001, for all who had harassed her.

24 **Where is the evidence about character?**

25 Evidence shows Petitioner gave a home to a homeless seventeen-year-old girl in 2001
 26 (Exhibit 51). This is a person without compassion? There is no evidence that Petitioner is
 27

1 unable or unwilling to recognize other people's feelings and needs. It is a baseless slander by
2 the COMMISSION. Plaintiff hopes to be vindicated. That does not mean she is vindictive.
3 The district gave no testimony about what these "interpersonal conflicts" were about. No
4 dates, no names, no description of words or actions. on the basis of these factual findings:
5 Exhibit 14 page 30 in evidence--compassion for Sandra
6

7 Mrs. Larkins stated on page 312 of the Court Reporter's transcript: "I just didn't want
8 to complain about these people to the Assistant Superintendent. It just seemed to be making
9 too big a deal out of it, and that's why I told Dr. Donndelinger (the principal), you know, I
10 didn't want to make that big a deal out of it. 'I just wanted to talk to you first.'"
11 Page 313 Mrs. Larkins: "...the Comer process is a—it's based on a philosophy whereby
12 everyone is important, every voice is heard, every child, every teacher, every parent, and it
13 was perfect for my situation because I literally was not being heard."
14

15 This case has almost no resemblance to Woodland. Mrs. Larkins is clearly different
16 from Mr. Zuber. The only fixed character traits apparent in Mrs. Mrs. Larkins are courage,
17 and faith in the justice system. Al Smith actually accuses Mrs. Larkins of saying, "We need
18 to be positive."
19

20 Mrs. Larkins' motives were revealed in her Dec. 4, 2001 letter to Cheryl
21 Cox (Exhibit 47),

22 "You have been entrusted with the responsibility not only to advance the
23 academic and general wellbeing of the students of the district, but to protect the
24 taxpayers' money from liability due to illegal actions by the district's
25 administration. Actions against me by Mr. Werlin and Libby Gil will probably be
26 very costly to the district. I trust you have fulfilled your obligation to the taxpayers,
27
28

38

1 voters and children of Chula Vista by examining my case since I gave notice of
2 intent to sue the district exactly two months ago. I believe this requires reading my
3 five grievances.

4 "For some reason the school board as a whole appears not to have decided
5 to demand that Mr. Werlin and Dr. Gil obey the contract and the law (surely Mr.
6 Werlin and Dr. Gil would obey such an order?), but I trust you are nevertheless
7 dismayed that yesterday Mr. Werlin dug the district still deeper into the legal
8 morass that he and Libby have created.

9
10 "I am concerned that our new director of Human Resources, Tom Cruz, is
11 being tainted by the unfinished business and improper policies of Mr. Werlin. Dr.
12 Cruz knows (or should know) that I am entitled to a hearing regarding my
13 suspension without pay, and that I am entitled to full pay until after the hearing, and
14 that a pay stoppage that is 26-days retroactive is illegal (ten days notice must be
15 given!) Yet this is happening on his watch. I doubt that Mr. Werlin and Dr. Gil
16 would respond positively to him if he were to ask them to obey the law.

17
18 "That is why it is incumbent upon you and the other board members to do
19 so. It occurs to me that you, as a long-time principal in Chula Vista, must know
20 these things, Mrs. Cox. I don't recall hearing about wholesale violations of the
21 contract when you were a principal. Why haven't you done anything about this
22 current situation? I'd like to suggest that it's time to clean up Chula Vista School
23 District. The board of education needs to make it clear to the administration that
24 the contract and the law must be obeyed at all times.
25
26
27
28

39

1 "A new morality needs to be introduced into the district office and the
2 schools. No more lies. No more slander. No more jostling for personal political
3 power at the expense of children.

4 "Mr. Werlin's efforts, extreme as they have been, have failed to cover up the
5 facts of my case. This failure has made it clear that truth and justice are the only
6 means for solving this problem. You owe the taxpayers and children of Chula Vista
7 an immediate and intensive investigation of my case."

8
9 MRS. LARKINS was doing a public service by making sure they had every
10 opportunity to comply with the law before a lawsuit was filed. A lawsuit causes hurt
11 feelings, as the COMMISSION notes

12 The COMMISSION ignored evidence that Mr. Werlin was very hostile to Mrs.
13 Larkins, and that he was given complete authority by the DISTRICT to determine every
14 condition of Petitioner's employment. The COMMISSION ignored evidence that Mrs.
15 Larkins and any reasonable person would fear to go into a situation as serious and escalating
16 as the one he created for Petitioner.

17
18 The evident unfitness for service is based on insubordination, which is not supported by
19 the evidence nor by the proper construction of the law.

20
21 There is no evidence that Petitioner's quest for justice was blind, nor that it was based
22 upon a stubborn, unforgiving nature.

23 The unsigned, undated letter allegedly written by Michelle Scharmach (Exhibit 7),
24 contains hearsay about Petitioner. Mrs. Scharmach did not testify. It is most likely that this
25 letter was prepared after Petitioner wrote to her saying, "I cannot fault you." Mrs.
26 Scharmach's guilty conscience may have caused her to read it, "I cannot forgive you."
27

1 or any finding which finds that Petitioner failed to forgive a single action anything or
 2 anybody. One would presume an act must have taken place in order for it to be forgiven.
 3 What acts should have been forgiven? False allegations? But the COMMISSION has not
 4 found one single allegation to be false, not even the allegation that Petitioner had behaved as
 5 if she would kill people.
 6

7 **B. THE COMMISSION VIOLATED THE RULES OF EVIDENCE**

8 There was clear abuse of discretion by the COMMISSION in accepting and relying
 9 on evidence which was hearsay, notes which were prepared long after events and presented
 10 as contemporaneous notes, an unsigned and undated letter which was slipped into a back-
 11 dated report.
 12

13 The District produced documents in late December 2002 for a January 6,
 14 2003 hearing. Pages were missing: Bate-stamped pages 39 and 55 in particular.
 15 There was not time to compel complete production. Petitioner asks that these be
 16 produced and introduced into evidence.
 17

18 Many, if not most, of the notes produced by Principal Donndelinger were
 19 prepared long after the date to which they refer, most likely after the District was
 20 sued. Dr. Donndelinger's notes dated March 26 include the words, "I later tried to
 21 call her that evening at home." The words *that evening* indicate that these notes
 22 were prepared a while later. They should not have been admitted into evidence
 23 without some claim of memory impairment and some explanation of why the
 24 original notes were not produced for some dates.
 25

26 The "library incident" was reported three months after the fact by Mrs.
 27 Scharmach and Ms. Del Galdo. Dr. Donndelinger's notes about it were prepared
 28

41

1 long after the report, which occurred long after the alleged "incident." On these
2 notes, (Exhibit 14, pages 1 and 2). Dr. Donndelinger wrote at the top of the page,
3 "Around 9/21/00." In the middle of the page she wrote, "About one month later."
4 On the next page she wrote, "Lynne and Michelle told me before Christmas."
5 These are obviously notes written long after the incident, and should not have been
6 accepted into evidence.
7

8 Neither Mrs. Scharmach nor Ms. Del Galdo testified. Mr. Werlin's and Dr.
9 Donndelinger's testimony is hearsay.

10 Mrs. Scharmach's letter about the incident (Exhibit 7) is not acceptable because it is
11 hearsay, it is unsigned, undated and was added to Mr. Werlin's November 21, 2001 report
12 (Exhibit R-35), and produced *after Mrs. Larkins filed suit against the District*. Exhibit R-35
13 is the actual report given to Mrs. Larkins on November 21, 2001. Exhibit 44 is the same
14 report excet it has been revised so as to make a reference to the Scharmach letter, and has
15 been back dated to October 4, 2001 (see page 423 of Court Reporter's Transcript). Mrs.
16 Scharmach did not testify as to the date or the validity of the letter, nor did she sign it. Mrs.
17 Larkins testified that the real report was Exhibit R35 (pages 420-423 of Court Reporter's
18 transcript). It is most likely that this letter was prepared after Petitioner wrote to her saying,
19 "I cannot fault you." Mrs. Scharmach's guilty conscience may have caused her to read it,
20 "I cannot forgive you."
21

22
23 FACTUAL FINDING 28—Invalid—relying on hearsay of hearsay. Mrs. Larkins
24 testified that Kathy Bingham said that Mrs. Larkins might have poisoned food. Mrs.
25 Larkins did not testify to having told a joke to Kathy Bingham. Kathy Bingham did not
26 testify. Maria Beers was not present at either time when Mrs. Bingham or Mrs. Larkins
27

1 spoke of poisoned food. The COMMISSION is relying on Maria Beers hearsay of some
2 unknown person's hearsay.

3 Mr. Werlin's and Dr. Donndelinger's testimony about events they did not witness,
4 and what others said that someone said, and even what someone said to them, is hearsay.
5 This hearsay should not be relied upon for findings.
6

7 No hearsay, or hearsay of hearsay, should be relied upon for findings.

8 Petitioner requests that Exhibit 40, a grievance regarding Transfer, pertaining to
9 Article 33 of the Collective Bargaining Agreement be entered as evidence. The Commission
10 chose to rule on this grievance, without the grievance itself being taken into evidence. Also,
11 Petitioner asks that the appropriate Article from Exhibit 6, the Collective Bargaining
12 Agreement, be entered into evidence in order to rule on this grievance.
13

14 The Commission, in Factual Finding 17, ruled on the facts in Grievances 1 and 2
15 regarding Employee Discipline (Exhibits 26 and 30). Petitioner asks that Exhibit be taken
16 into evidence. Petitioner asks that Article 38, Employee Discipline, be accepted into
17 evidence in order to decide the grievance.

18 The Commission also ruled on the Safety Grievance. Petitioner asks that the court
19 review the decisions on the grievances. Alternatively, Petitioner asks the court to invalidate
20 the findings.
21

22 Notice of Logdment is attached. Exhibit Books and Court Reporter's
23 Transcript and court record are attached as exhibits and incorporated by reference
24

25 5/12/03
26

27 Maura Larkins
28 Plaintiff in pro per
43

CIVIL JUSTICE OFFICE 18
CENTRAL DIVISION

2003 MAY 12 P 3:56

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 MAURA LARKINS
2 1935 Autocross Court
3 El Cajon, CA 92019
4 619 660 6955

5 Plaintiff in pro per

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN DIEGO

9 MAURA LARKINS,
10 Petitioner,

11 vs.

12 COMMISSION ON
13 PROFESSIONAL COMPETENCE
14 Respondent

15 CHULA VISTA ELEMENTARY SCHOOL
16 DISTRICT, Real Party in Interest

) Case No. GIC 810661
)
)
) PETITION FOR WRIT OF
) MANDATE (CCP sections 1085,
) 1094.5)

17
18 MAURA LARKINS hereby petitions for issuance of a writ of mandate under Code of
19 Civil Procedure sections 1085 and 1094.5 as follows:

20 1. MAURA LARKINS is an individual residing in the County of San Diego,
21 California, and is the Respondent in an administrative proceeding regarding her dismissal as
22 a certificated permanent employee of CHULA VISTA ELEMENTARY SCHOOL
23 DISTRICT.

24
25 2. Respondent COMMISSION ON PROFESSIONAL COMPETENCE, hereinafter
26 referred to as the "COMMISSION," is a transitory administrative body duly authorized and
27 organized under the laws of the State of California, in accordance with Education Code
28

1 section 44944. The COMMISSION consists of an administrative law judge and two
2 certificated school employees. The COMMISSION was constituted for the limited purpose
3 of conducting a hearing regarding whether the DISTRICT had a legal right to dismiss
4 Petitioner LARKINS from her position as a certificated permanent employee of CHULA
5 VISTA ELEMENTARY SCHOOL DISTRICT.

6
7 3. Real party in interest CHULA VISTA ELEMENTARY SCHOOL DISTRICT,
8 hereinafter referred to as the "DISTRICT," is a public school DISTRICT organized and
9 operating pursuant to the Constitution and laws of the State of California, and is governed by
10 a five-member Board of Education.

11 4. On June 5, 2002, a written accusation was served on Petitioner MAURA
12 LARKINS charging that cause existed to dismiss her as a certificated permanent employee of
13 the DISTRICT based on persistent violation of and refusal to obey the school laws of the
14 state or reasonable regulations prescribed by the Governing Board, evident unfitness for
15 service, and willful refusal to perform regular assignments without reasonable cause.

16
17 5. MAURA LARKINS requested a hearing pursuant to Education code section 44944
18 and Government Code sections 11500 *et seq.*

19
20 6. A hearing in the matter pursuant to Petitioner MAURA LARKINS's request was
21 commenced on January 6, 2003 and continued through January 10, 2003.

22 7. On February 11, 2003, the COMMISSION mailed to the DISTRICT and to
23 MAURA LARKINS its written decision that MAURA LARKINS should be dismissed. A
24 copy of said decision is attached as Exhibit A.
25
26
27
28

1 8. Respondent's decision is invalid under the Code of Civil Procedure section 1094.5
2 and Respondent committed a prejudicial abuse of discretion in that it has not proceeded in a
3 manner required by law.

4 9. Respondent's decision is invalid under the Code of Civil Procedure section 1094.5
5 and Respondent committed a prejudicial abuse of discretion in that and its decision is not
6 supported by the findings.
7

8 10. Respondent's decision is invalid under the Code of Civil Procedure section 1094.5
9 and Respondent committed a prejudicial abuse of discretion in that its findings are not
10 supported by the evidence.

11 11. The COMMISSION had discretion to determine the relevant facts.

12 12. The hearing was required by law to be held for the determination of those facts.

13 13. Evidence was required to be taken at the hearing.

14 14. According to Education Code section 44945, the court, on review, must exercise its
15 independent judgment on the evidence.
16

17 15. There is no other plain, speedy or adequate remedy in the ordinary course of law
18 available to Petitioner.

19 16. This Petition seeks Administrative Mandamus in accordance with Code of Civil
20 Procedure section 1094.5, and in light of the fundamental right involved, the independent
21 judgment test applies. Alternatively, this petition seeks writ of Mandate pursuant to Code of
22 Civil Procedure section 1085.
23

24 17. This Petition is based on and supported by the attached Memorandum of Points
25 and Authorities.
26
27
28

Prayer for relief

WHEREFORE, Petitioner prays:

1. For a writ of mandate directing the COMMISSION to set aside its decision, and further ordering that MAURA LARKINS be reinstated in her position as a credentialed permanent employee of the district;
2. For attorney's fees and costs of the administrative hearing on this matter, and for the costs of this petition;
3. For other and further relief as the Court may deem proper.

May 12, 2003



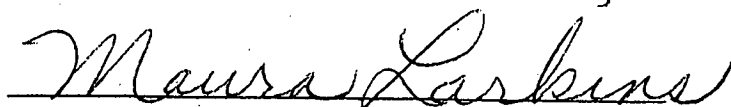
Maura Larkins, Petitioner

VERIFICATION

I, MAURA LARKINS, am the petitioner in the above-entitled proceeding. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

May 12, 2003



Maura Larkins, Petitioner

EXHIBIT 3

BEFORE THE COMMISSION OF PROFESSIONAL COMPETENCE
CHULA VISTA ELEMENTARY SCHOOL DISTRICT
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

CERTIFIED COPY

)
In the matter of the Accusations) Case No. L-2002050728
against)

)
MAURA LARKINS)

)
Respondent.)

Reporter's Transcript

San Diego, California

January 6, 2003

(Volume 1)

Reported By:

JEAN S. ALFAFARA
C.S.R. #7418

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1 model for instructional improvement.

2 According to this letter, it would appear that
3 it's to resolve issues. I don't know that to be the
4 fact.

5 THE COURT: Okay. Thank you.

6 BY MR. BRESEE:

7 Q When you saw this letter, did you step back
8 and -- "this letter" being Exhibit 11 -- did you step
9 back and decide not to get involved at that point?

10 A I felt like I didn't have any other option. I
11 was still concerned, but I did step back because
12 unless -- unless there is an agreement for
13 bi-participation, then it doesn't take place, so yes, I
14 did step back.

15 Q Did you at some point after seeing this letter
16 in not getting involved become aware of this issue at
17 Castle Park again subsequently?

18 A Yes, I did.

19 Q Do you recall the when the next time you heard
20 about the issues at Castle Park was?

21 A I don't have the exact date, but it was
22 sometime shortly after this that there was -- I received
23 a phone call from the teacher.

24 Q Who was the teacher?

25 A Jo Ellen Hamilton.

1 Q And where and when was this phone call
2 received?

3 A I received the phone call at my home on a
4 Saturday evening at approximately 8:15 in the evening.

5 Q And what was communicated to you in this phone
6 call?

7 A Well, Mrs. Hamilton first apologized for
8 reaching me on a Saturday night and alleging that she
9 was interrupting me, and I said no, it was not an
10 interruption, and she had had a great deal of concern
11 and trepidation in her voice. She had a concern about a
12 fellow teacher, and she went into discussing a
13 conversation that she had had with Maura Larkins where
14 she was alleging that Maura invaded her space, got very
15 close to her, and it was very frightening the way Maura
16 looked at her and the tone of voice. She shared with me
17 that she was very concerned about her life because she
18 was the mother of two small children, and it was very
19 concerning to her and wanted to make sure that I knew
20 about this.

21 Q Did she say when this conversation had taken
22 place?

23 A It had happened that week, but I don't recall
24 when it had happened that week.

25 Q Did she say why she waited until Saturday night

1 to call you?

2 A I don't recall the reason.

3 Q Did you question why she had waited until
4 Saturday night to call you?

5 A I did not at the time quite frankly because she
6 was so upset and unnerved by this alleged confrontation
7 with Maura Larkins that it was more important to play
8 the role of an active listener than doing a lot of
9 inquiry at that time.

10 Q In your experience as a human resources
11 administrator for school districts, have you had
12 employees call you at home on weekends previously to
13 express concerns?

14 A It's very rare. Perhaps in almost 30 years,
15 for a teacher to call, it's a rarity, particularly on a
16 Saturday evening. In the evening it's highly unusual.

17 Q Do you know -- strike that.

18 Did you ask how she got your home phone number?

19 A No, I did not. My number -- we require that
20 all cabinet members are listed.

21 Q Listed in the regular phone book?

22 A In the directory, in the school district
23 directory. I am also listed in the public directory.

24 Q Had you given her specifically your phone
25 number?

1 A I don't recall ever giving her specifically my
2 number, no.

3 Q And on hearing this information, what, if
4 anything, did you say back to her?

5 A Well, the first thing that I said to her was
6 that I appreciated her coming forward with this
7 information, that we would have to make sure that this
8 was investigated and that we would give all parties an
9 opportunity to respond. However, she was so frightened
10 and was not -- was not anxious to go back to school, was
11 very concerned for her safety and particularly because
12 she said she was the mother of two young children, and I
13 assured her that we would take every opportunity to
14 provide a safe environment for all of our employees.

15 Q And after speaking with her, what, if anything,
16 did you do based on this phone call?

17 A I immediately attempted to reach her principal.
18 I was unable to right away, but I did reach her that
19 weekend.

20 Q And was that Dr. Donndelinger?

21 A Yes. Dr. Donndelinger.

22 Q Did you subsequently meet with Maura Larkins --

23 A Yes, I did.

24 Q -- about this incident?

25 A Yes, I did.

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EXHIBIT 4



BEFORE THE GOVERNING BOARD OF THE
CHULA VISTA ELEMENTARY SCHOOL DISTRICT

IN THE MATTER OF THE ACCUSATION)
AGAINST)
 MAURA LARKINS,) Case No. L-2002050728
)
 Respondent.)

DEPOSITION OF JOELLEN HAMILTON

Taken on Tuesday, September 10, 2002
At 1:00 A.M.
At 84 East J Street
Chula Vista, California 91910

CONDENSED TRANSCRIPT

APPEARANCES

For the Plaintiff:

MARK R. BRESEE
 BY: MARK R. BRESEE, ESQ.
 23195 La Cadena Dr., Suite 103
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 (949) 587-0585

For the Respondent:

SCHULMAN & SCHULMAN A.P.C.
 BY: ELIZABETH SCHULMAN, ESQ.
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 San Diego, California 92101
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Also present:

Maura Larkins
 Gina Boyd

A. No.

MS. SCHULMAN: And I note that we have another person who is present in the deposition. Ma'am, are you Gina Boyd?

MS. BOYD: Yes, I am.

MS. SCHULMAN: And you're president of the Teachers' Union for this district; is that correct?

MS. BOYD: Yes.

MS. SCHULMAN: And what is your purpose in being here today?

MS. BOYD: As an observer with one of my union members.

MS. SCHULMAN: I would note and I have noted this with Mr. Bresee, that I object to your presence here since there is a teacher dismissal that is involved in this proceeding, which I am defending on behalf of -- not one of your current members, then, one of your former members. And it seems to me, you are here in the capacity representing one member against the other, which as I understand it is not something that is permissible.

So, as far as I'm concerned, I really don't think it's appropriate for you to be here and request that you leave.

MS. BOYD: I'm sorry. I will stay as an observer with my union member.

MS. SCHULMAN: You understand you are not allowed to participate, in any matter, with this procedure or interfere

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JOELLEN HAMILTON,

called as a witness by the defendant, who, being by me first duly sworn, was thereupon examined as a witness in said cause.

EXAMINATION

BY MS. SCHULMAN:

Q Could you please state your full name for the record?

A JoEllen Hamilton.

Q Have you ever had your deposition taken before today?

A No.

Q And how do you spell your name?

A J-o-E-l-l-e-n H-a-m-i-l-t-o-n.

Q Before we went on the record, I gave you a document entitled "Deposition Preamble," which I asked you to read. We marked this as Exhibit I to the previous deposition. Have you taken the time to read it?

A Yes.

Q Do you understand the information contained therein?

A Yes.

Q And do you have any questions about the information contained in that document?

A Not so far.

Q All right. Do you know of any reason why you couldn't give your best testimony here today?

with it?

MS. BOYD: Absolutely.

MR. BRESEE: I would like to put on the record that I think it's somewhat unusual to suggest that -- two things, one, that an individual shouldn't be present when there's no basis that the individual is going to interrupt the deposition in any way, shape, or form.

And secondly, when you talked about one union member against the other. The respondent in this case, Maura Larkins, has made accusations against other members and in this filing a lawsuit, naming the deponent as a defendant. So, to suggest that this is being transformed into one union member over another because of Ms. Boyd's presence when Ms. Larkins, long ago, made this into a union member against others dispute, I think, is misstating the history of this case. I just want that on the record also.

And I think that she has every right to be here. The deponent has every right to have a representative here.

MS. SCHULMAN: This case involves an action of dismissal that was brought by the school district against Ms. Larkins.

As I understand it, any civil action that might have been brought against Ms. Hamilton has already been resolved by the court. So, there is nothing current as to that.

It is my understanding that this union has in the

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1 past represented Ms. Larkins, if not in this matter, then in
 2 related matters. And I will say that in 26 years of practicing
 3 law, I have never once had anybody other than a witness, the
 4 parties' attorneys, and an attorney representing a deponent
 5 from time to time, I have never had an observer. I have never
 6 requested an observer be present in any deposition that I have
 7 participated in, and I find this highly inappropriate.
 8 But my choice is to either proceed or delay the
 9 proceedings before the appropriate body that we have here. And
 10 as far as the presence of Ms. Boyd, I don't know and I have no
 11 personal quarrel with her. We voiced our objections. We elect
 12 to go forward, but we may take some action, further action,
 13 that will not delay these proceedings regarding this matter.
 14 And I must say from a personal point of view, since I
 15 was requested to change the depositions for this week at your
 16 request, Mr. Bresee, to this location, which I agreed to do and
 17 which I promised I am abiding by at this point in time, I feel
 18 somewhat like I have been corralled here. And all of a sudden,
 19 over my protest, there is a union representative present, who I
 20 believe would not be here if it were conducted in my office.
 21 And at this juncture, I am seriously considering moving
 22 tomorrow's depositions to my office.
 23 MR. BRESEE: Well, that's fine. She will be there at
 24 your office tomorrow if you choose to do that. Her presence
 25 here has nothing to do with the fact that we asked, and you

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1 agreed, to move the depositions here. Just so that the
 2 individuals being deposed would have less time away from the
 3 work place than they otherwise might. But if you want to move
 4 it back to your office, that's fine.
 5 MS. SCHULMAN: I will mull that one over. I also
 6 will note for the record that this witness's deposition was
 7 noted for 2:00 o'clock at her request made through your office.
 8 I agreed to do my best to move it up to 1:00 o'clock, which we
 9 have done. It is now 1:15. So, I intend to get started with
 10 this deposition.
 11 BY MS. SCHULMAN:
 12 Q Ms. Hamilton, do you have any kind of college
 13 degrees?
 14 A Yes.
 15 Q And where did you graduate from college?
 16 A San Diego State University.
 17 Q And when?
 18 A 1988.
 19 Q And with what degree?
 20 A Degree in liberal studies, and then, also, I got my
 21 teaching credential.
 22 Q And did your teaching credential involve teaching
 23 students at a particular grade level?
 24 A Yes, student teaching.
 25 Q What grade level?

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1 A I do my student teaching in kindergarten and in a
 2 fourth grade classroom.
 3 Q And did part of your educational studies at San Diego
 4 State University involve studies in early childhood education?
 5 A Yes.
 6 Q And approximately, how many credits did you earn in
 7 education areas, undergraduate?
 8 A Well, the credential is 30 units, and I cannot recall
 9 before that how many units I took in early childhood education.
 10 I'd have to look at my transcripts.
 11 Q And did you graduate with any particular honors?
 12 A No.
 13 Q Do you have any degrees, beyond your bachelor's from
 14 San Diego State?
 15 A No.
 16 Q Have you pursued any additional courses of study,
 17 beyond your bachelor's degree?
 18 A Yes, I have.
 19 Q And what courses of studies have you pursued?
 20 A Classes that I took, probably six years ago to -- in
 21 order to work on my CLAD certificate.
 22 Q And what is your CLAD certificate?
 23 A It's a Cross-Cultural Language Development
 24 Certificate that the district encourages us to pursue.
 25 Q And did you complete that certificate?

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1 A Not quite yet. I have to take another Spanish class.
 2 Q If I understand you correctly, did you take
 3 everything that you needed six years ago except for that one
 4 Spanish class, or have you been doing this over the course of
 5 six years?
 6 A No. I just took four classes. I believe they were
 7 back to back. It was so long ago. Four classes through
 8 National. They have a special program there for the CLAD
 9 certificate for the teachers. So, I took these four classes,
 10 and then I took a Spanish class last year. But I believe I
 11 still have to obtain one or two more units in Spanish before
 12 I'm completely ready to apply for the certificate.
 13 Q And once you get that certificate, what will that
 14 certificate make you eligible to do, if anything?
 15 A The only thing different, I believe, is to be able to
 16 transfer to another school.
 17 Q Any particular type of school?
 18 A No.
 19 Q Why is that? You are --
 20 A It's also so that I can have the second language
 21 students in my classroom, but as far as transferring to another
 22 school, I have no desire at this time. But you never know when
 23 I'll be ready for a change.
 24 Q So, at this time are you not able to transfer to
 25 another school?

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3 (Pages 6 to 9)

1 questions, to call him. And it happened to be a Saturday
 2 evening, and I called him to see if the meeting had gone
 3 through. And I don't remember what else.
 4 Q So, you called him at home?
 5 A Yes, I did. He had told me if I had any questions or
 6 concerns, that I could call him.
 7 Q At any time?
 8 A Uh-huh.
 9 Q That was a yes?
 10 A Yes. I believe that's what he said. I don't
 11 remember the specific words.
 12 Q Okay. And did he give you his home telephone number?
 13 A No, he did not.
 14 Q Was that a number that was available to you, as an
 15 employee of the district?
 16 A Yes, it is.
 17 Q And when he said, "You call me at any time," did you
 18 take that to mean that it was okay to call him on a Saturday
 19 evening and not on school time?
 20 A Yes, I did.
 21 Q Was there something that had happened over that
 22 weekend that caused you to call him on a Saturday evening, as
 23 opposed to waiting until regular school hours?
 24 A He was supposed to have a meeting with her on Friday
 25 afternoon.

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1 Q That was your understanding?
 2 A That was my understanding.
 3 Q He had told you that?
 4 A Yes. To the best of my recollection, he had told me
 5 that he was going to have a meeting with her to talk about this
 6 issue on Friday.
 7 Q The issue being, the letter?
 8 A The letter, the confrontation in the staff room.
 9 Q And you wanted to find out if the meeting had
 10 occurred and what the results were?
 11 A If the meeting had occurred, what the results were,
 12 did we have something set up for the following week.
 13 Q And what did he tell you the results of the meeting
 14 were, if in fact, the meeting had occurred?
 15 A You know, I do not recall what he said.
 16 Q Did he tell you the meeting had occurred?
 17 A I do not even remember.
 18 Q So, you called at his invitation to contact him,
 19 correct?
 20 A He said if I had any questions or concerns, to
 21 contact him. And I thought well, if his number's in the
 22 directory, then it would be okay to contact him.
 23 Q Did you ever tell him, Rick Werlin, in that telephone
 24 conversation or at any other time that there was something that
 25 Ms. Larkins had done, which made you fear for your life?

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1 A No.
 2 Q Did you have any kind of communication either
 3 directly or with Rick Werlin or with anybody else, wherein you
 4 made a statement to the fact that you were fearful of your life
 5 because of Ms. Larkins's contact?
 6 A No.
 7 Q Did Ms. Larkins ever threaten your life?
 8 A No.
 9 Q Other than this one conversation at home with the --
 10 with Mr. Werlin, did you have any other conversations with
 11 Mr. Werlin outside of regular school hours concerning
 12 Ms. Larkins?
 13 A In and out, outside of regular school hours?
 14 Q Did you participate in any kind of meeting during the
 15 school week concerning Ms. Larkins?
 16 A Yes, I believe we had a meeting. I don't remember
 17 when or exactly what was discussed.
 18 Q And was it concerning Ms. Larkins?
 19 A Yes.
 20 Q And was it in 2001?
 21 A I believe so.
 22 Q And who was present at that meeting?
 23 A You know, I do not recall.
 24 Q Was Ms. Larkins present?
 25 A No. She was -- I do not believe she was at school,

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1 at that time.
 2 Q Was she on some sort of leave?
 3 A I do not know.
 4 Q Do you remember, generally, the gist of what was
 5 discussed about Ms. Larkins?
 6 A I guess -- let me see. We were concerned about her
 7 behavior at school, and I can only speak for myself. I was
 8 concerned about her behavior at school.
 9 Q Was anything else discussed?
 10 A Not that I recall.
 11 Q How many people were at the meeting?
 12 A A hand full. I don't remember who was there.
 13 Q Was Mr. Werlin there?
 14 A Yes.
 15 Q Was Dr. Donndelinger there?
 16 A I believe she was, but I do not recall who else was
 17 there.
 18 Q And where was the meeting held?
 19 A It would have been in Dr. Donndelinger's office.
 20 Q And was this during a time when Ms. Larkins was on
 21 campus teaching or when she was on a leave of absence?
 22 A I don't believe she was on campus. I do not know why
 23 she was not on campus.
 24 Q What, if anything, were the results of this meeting?
 25 A I'm trying to remember. Mr. Werlin, I believe, was

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